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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/800,793	03/07/2001	John Hathaway	940-3079-U	5476

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ART UNIT	PAPER NUMBER
3727	

DATE MAILED: 02/11/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/800,793	HATHAWAY ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Robin A. Hylton	3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-8 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-8 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 07 March 2001 is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.
 

If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
  - a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_

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## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the bottom section of the annular side wall being tapered must be shown or the feature canceled from the claim. No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Specification***

2. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed. The title should include at least one technical, or inventive, feature of the claimed instant invention.
3. The disclosure is objected to because of the following informalities: the brief description of figure 5 erroneously indicates the view comes from figure 1. Drawing figure 2 contains the reference to figure 5.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

4. Claims 3-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the claims are rejected for the following reasons:

The scope of the claims is not clearly defined since a contradiction exists within the body of the claims of whether the subcombination of the closure only or the combination of the closure and the gasket is being claimed. For instance, in the preamble of the claims, the

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closure is set forth as being the claimed invention. However, in claim 3, line 2, "employing a gasket to provide a seal" positively sets forth a dependent relationship between the members for sealing a container. If applicant intends to only claim the closure, the claim language should be amended to so reflect this intention.

Dependent claims not specifically mentioned are rejected as depending from rejected base claims since they inherently contain the same deficiencies therein.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Lever (US 4,331,250).

Disclosed is a closure **20** having a cap portion **22** and an annular side wall portion **24** beneath the cap portion, the annular side wall portion having a top neck section with a plurality of annular sealing bands **34** thereon, a threaded section (having threads **36**) beneath the top neck section, and a bottom section beneath the threaded section (fig. 2).

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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8. Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marchyn (US 2,906,429) in view of Williams (US 1,842,226).

Marchyn teaches a closure having a cap portion 3 and an annular side wall beneath the cap portion, the annular side wall having a top neck section, a threaded section (having threads 7) beneath the top neck section, and a bottom section beneath the threaded section, the top neck section further employing a gasket 6 (fig. 7). Marchyn does not teach annular sealing rings for engaging the gasket.

Williams teaches a closure having a cap portion and an annular side wall portion beneath the cap portion, the annular side wall portion having an annular bead 12 which engages a gasket 11 upon application to a container neck.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of an annular sealing ring to the plug of Marchyn. Doing so would ensure the gasket remains positioned between the closure and an associated container neck to effect the desired seal. To apply a plurality of annular sealing bands would have been obvious to one of ordinary skill in the art since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

Regarding claims 5 and 6, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the sealing bands with an angled surface approximately 50° from the horizontal and the top surface displaced downwards approximately 10° from the horizontal, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

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9. Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johanson (US 5,862,936) in view of Williams.

Johanson teaches a closure having a cap portion 10 and an annular side wall 22 beneath the cap portion, the annular side wall having a top neck section, a threaded section (having threads 24) beneath the top neck section, and a bottom section beneath the threaded section, the top neck section further employing a gasket 30 (fig. 7). Johanson does not teach annular sealing rings for engaging the gasket.

Williams teaches a closure having a cap portion and an annular side wall portion beneath the cap portion, the annular side wall portion having an annular bead 12 which engages a gasket 11 upon application to a container neck.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of an annular sealing ring to the plug of Johanson. Doing so would ensure the gasket remains positioned between the closure and an associated container neck to effect the desired seal. To apply a plurality of annular sealing bands would have been obvious to one of ordinary skill in the art since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

Regarding claims 5 and 6, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the sealing bands with an angled surface approximately 50° from the horizontal and the top surface displaced downwards approximately 10° from the horizontal, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Regarding claim 8, the bottom wall is as tapered as that disclosed and claimed.

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***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Prior art references teaching annular sealing bands, plugs employing gaskets, and different configurations of thread or sealing band shapes are cited for their disclosures. It should be noted that several of the cited prior art references are pertinent to applicant's claimed invention and could be applied against the claims, but are not to avoid overburdening the applicant and the examiner.

11. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703) 305-3579. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

12. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. \_\_\_\_\_ is being facsimiled to The U.S. Patent and Trademark Office via fax number (703) 305-3579 on the date shown below:

Typed or printed name of person signing this certificate

\_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (703) 308-1208. The examiner can normally be reached on Monday - Friday from 9:30 a.m. to 5:00 p.m. (Eastern time).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young, can be reached on (703) 308-2572.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Errica Bembry at (703) 306-4005.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148.

RAH  
February 4, 2002



Robin A. Hylton  
Patent Examiner  
GAU 3727